

Benefits Under the Domestic Partnership Act

All Pension Funds and the State Health Benefits Program

Chapter 246, P.L. 2003, the Domestic Partnership Act, establishes certain rights and responsibilities for domestic partners in the State of New Jersey. The law also extends public pension and State Health Benefits Program (SHBP) benefits to same-sex¹ domestic partners of State employees and retirees and permits local governmental employers to extend those same domestic partner benefits to their employees and retirees.

This fact sheet deals only with the pension and SHBP benefits extended by Chapter 246. It does not address the broader rights and responsibilities covered by the law nor does it cover questions of eligibility for a domestic partnership since they are outside of the scope of the Division of Pensions and Benefits.

ELIGIBILITY

Under Chapter 246 a domestic partner is defined for pension and SHBP benefits eligibility as a person of the same sex to whom the employee or retiree has entered into a domestic partnership and received a New Jersey *Certificate of Domestic Partnership* through application to a local registrar.

The Domestic Partnership Act applies to any **State employee** or **State retiree** who has obtained a New Jersey *Certificate of Domestic Partnership* (or a valid certification from another jurisdiction that recognizes same-sex domestic partners, civil unions, or similar same-sex relationships). A **State employee** includes employees of the executive, judicial, and legislative branches paid through Centralized Payroll, employees of Rutgers University, UMDNJ, NJIT, and the State colleges and universities, and employees of the Palisades Interstate Park Commission, the NJ Building Authority, the State Library, the Waterfront Commission of NY Harbor, and the Commerce and Economic Growth Commission. A **State retiree** is any retiree from one of the above mentioned employers.

The Domestic Partnership Act applies to eligible employees and retirees of local public entities **only if** the governing body adopts the benefit by resolution or ordinance (see Adoption by Local Public Entities, below). The local public employee or retiree must also obtain a New Jersey *Certificate of Domestic Partnership* from the State of New Jersey (or a valid certification from another jurisdiction that recognizes same-sex domestic partners, civil unions, or similar same-sex relationships).

Note: Residents of another state may obtain a New Jersey *Certificate of Domestic Partnership* from any New Jersey local registrar as long as one of the partners is a member of a New Jersey administered pension system. If necessary, a *Certificate of Pension Membership* form can be used by out-of-state residents to provide the documentation needed to obtain a New Jersey *Certificate of Domestic Partnership*.

Adoption by Local Public Entities

In order for the Domestic Partnership Act to apply to the employees/retirees of a local public entity, the entity's governing body must pass a resolution or ordinance extending the domestic partner benefit and file it with the Division of Pensions and Benefits. The decisions to provide pension and/or SHBP benefits to domestic partners are separate and distinct decisions that must be made by the governing body.

The law gives the employer the option to extend, or not extend, the domestic partner benefit to its employees and retirees. However, if the employer wishes to provide domestic partner *pension* benefits, it must do so for **all** its employees and retirees in all of the pension funds in which it participates.

PENSION BENEFITS

The Domestic Partnership Act adds a same-sex domestic partner to the definition of spouse, widow,

¹ The law specifically states that the pension and health benefits provisions of the law do not apply to opposite-sex domestic partners because they could obtain those benefits by exercising the option of marriage.

and widower to the **State component** of the Public Employees' Retirement System (PERS), Teachers' Pension and Annuity Fund (TPAF), Police and Firemen's Retirement System (PFRS), State Police Retirement System (SPRS), and Judicial Retirement System (JRS), so that the domestic partner is treated in the same manner as a spouse. The law allows **local employers** to apply the same changes through action of its governing body.

PERS and TPAF Members

For the **PERS** and **TPAF**, the only benefit added by this law is that for Accidental Death. An eligible domestic partner will now be able to receive a pension benefit if the employee died by accident in the performance of his or her duty while at work. Regular PERS and TPAF retirements are not impacted since retirees can already name anyone as a joint and survivor beneficiary of their pension benefit. The Internal Revenue Service (IRS) does, however, restrict who a member can name as a beneficiary under Options 2, A, and B. Under Options 2 and A, a member cannot name a non-spouse beneficiary who is more than 10 years younger than the member; under Option B, the beneficiary cannot be more than 19 years younger. Additionally, a survivor's benefits from an Accidental Disability retirement or accidental line-of-duty death going to a domestic partner would be subject to federal tax. This is not the case when a survivor's benefit is paid to a spouse.

PFRS and SPRS Members

For the **PFRS** and **SPRS**, the statutory survivor's benefit, provided upon the death of the employee or retiree, will be able to go to a same-sex domestic partner under this law in the same manner as is now done for a spouse. Additionally, if a surviving partner is receiving a PFRS or SPRS survivor's benefit (with the exception of a survivor of an Accidental Death in the line of duty) and subsequently marries or establishes a new same-sex domestic partnership², the survivor will lose the pension benefit.

JRS Members

For the **JRS**, the statutory survivor's benefit, provided upon the death of the employee or retiree, will be able to go to a same-sex domestic partner under this law in the same manner as is now done for a spouse. Additionally, if a surviving partner is receiving a JRS survivor's benefit, and subsequently marries or establishes a new same-sex domestic partnership², the survivor will lose the pension benefit.

If a judge wishes to also select a joint and survivor retirement option, the IRS restrictions for Options 2, A, and B mentioned above under the PERS and TPAF would apply.

Other Pension Funds

The Domestic Partnership Act does not extend any domestic partner *pension* benefits to members of the Alternate Benefit Program, the Consolidated Police and Firemen's Pension Fund, the Prison Officers' Pension Fund, or the Volunteer Emergency-Worker's Survivors Pension.

STATE HEALTH BENEFITS PROGRAM COVERAGE

Coverage under the SHBP for same-sex domestic partners is available to any State employee, State retiree, an eligible employee or retiree of a local public entity **if** the governing body adopts the benefit by resolution (see Adoption by Local Public Entities, above). The eligible employee or retiree must obtain a New Jersey *Certificate of Domestic Partnership* (or a valid certification from another jurisdiction that recognizes same-sex domestic partners, civil unions, or similar same-sex relationships) and attach a photocopy of the *Certificate of Domestic Partnership* to the *SHBP Enrollment Application*.

Note: While the law states that local public employers who participate in the SHBP have the option of providing health benefit coverage to domestic partners, it does not offer that option to public employers who do not participate in the SHBP.

² Note that the establishment of a heterosexual domestic partnership will not cause the loss of the survivor's benefit because the pension and health benefits portions of the law do not apply to heterosexual couples.

Enrolling a Domestic Partner When an Employee

An employee must qualify for the domestic partner benefit by being a State employee or an employee of a SHBP-participating local employer who has adopted a resolution to extend domestic partner benefits. You then have 60 days from the date that you obtain your *Certificate of Domestic Partnership* to add an eligible domestic partner to your SHBP coverage. To add a new domestic partner, you must file an *SHBP Enrollment Application* with your employer and include a photocopy of your *Certificate of Domestic Partnership*. You may also add dependent children of your domestic partner at this time **provided they also qualify as your dependents** (see Enrolling Dependent Children below).

If you do not add your domestic partner or other eligible dependent children when first eligible, you must wait until the next regular SHBP open enrollment period.

Retiree SHBP Coverage

State retirees, and retirees of a SHBP-participating local public entity that has adopted domestic partner SHBP coverage by resolution, may cover a domestic partner in retirement provided that the retiree meets the requirements of the Domestic Partnership Act **and** all other requirements for eligibility in the Retired Group of the SHBP. See Fact Sheet #11, *Enrolling in the State Health Benefits Program When You Retire*, for more information.

Note: While some education and local PFRS retirees receive SHBP coverage paid — in-full or in-part — by the State, these retirees were not State employees and are not considered State retirees. Therefore, the eligibility of a domestic partner of an education or local PFRS retiree for SHBP coverage remains based on the actions of the governing body of the retiree's former employer. If the employer participates in the SHBP with its active employees and the governing body passes a resolution to extend the domestic partner health benefits to its employees and retirees, the retirees of that employer will be able to add an eligible domestic partner to their SHBP coverage.

Enrolling Dependent Children

The children of your domestic partner can be added as dependents under your SHBP coverage **only if** they are single, under the age of 23, live with you, **and are dependent upon you for support**. You will have to file an *Affidavit of Dependency* when you add them to your coverage.

The Cost of Domestic Partner Coverage

The Member & Spouse level of coverage will also be used for an employee and domestic partner. The premium rate for Member & Spouse and Member & Domestic Partner coverage will be the same. If the employee also has children enrolled for coverage, then the Family level of coverage will include the domestic partner at the same cost as if a spouse were covered.

TAXATION OF SHBP BENEFITS FOR DOMESTIC PARTNERS

The federal Internal Revenue Code (IRC) allows an employer to provide certain benefits to its employees on a tax-exempt basis. Those benefits can also be extended to spouses and dependents of an employee on the same tax-exempt basis. The IRC, however, does not recognize a domestic partner in the same manner as a spouse and does not automatically recognize a domestic partner as a dependent for tax purposes. Therefore, your employer may have to treat the domestic partner SHBP benefit as taxable to you and withhold federal income, Social Security, and Medicare taxes on its value. **This is also true if you are a retiree and are receiving employer- or State-paid health benefits coverage. If you add a domestic partner to your coverage, you should expect to receive a *Form W-2* and have to pay federal income, Medicare, and Social Security taxes on the imputed value of the domestic partner benefit.** Similarly, since the domestic partner's coverage is a federally taxable benefit, an employee who participates in the State's Tax\$ave (IRC Section 125) Premium Option Plan, or another employer's Section 125 plan, cannot make pre-tax payments for the cost of a domestic partner's coverage. Pre-tax dollars may still be used to pay for the employee's portion of the cost of his or her own and dependent children's coverage (see Certifying a Partner's Dependent Status on page 4).

The domestic partnership benefit is not subject to New Jersey State income tax. If you live outside of New Jersey, you should check with your State's tax agency to determine if the domestic partner benefit is subject to state taxes.

Determining the Imputed Income

The SHBP has no previous claims experience with domestic partners and, therefore, no basis on which to determine the true cost of domestic partner coverage. Until the SHBP can develop several years of claims experience with domestic partners, we will use the cost for Single coverage in determining the imputed value of SHBP coverage. The imputed income for federal tax withholding purposes will be the full cost of Single coverage for the plan in which the employee or retiree is enrolled less any amount the employee/retiree pays towards the cost of the domestic partner's coverage.

Example 1: A State employee with Single coverage in NJ PLUS, the Employee Prescription Drug Plan, and the Dental Expense Plan adds a domestic partner to the coverage of all three plans. The domestic partner benefit is a federally taxable benefit. The biweekly imputed income for the NJ PLUS and Employee Prescription Drug Plan, for which there is no employee premium charge, is the full cost of Single coverage, or \$131.75 and \$47.32, respectively. The biweekly imputed income for the Dental Expense Plan, for which the employee does premium share, is \$13.48. This is the full cost of Single coverage, \$18.48, minus the amount that the employee has paid for the domestic partner coverage, \$5.00 (the difference between the employee share for Single coverage, \$9.24, and for Member & Spouse/Domestic Partner coverage, \$14.24). The total biweekly imputed income attributable to domestic partner coverage for this employee is \$192.55, the sum of the imputed incomes for all three plans.

Example 2: A State retiree with State-paid Single with Medicare retired SHBP coverage in the Traditional Plan adds a domestic partner to the plan. The domestic partner benefit is a fed-

erally taxable benefit. The monthly imputed income for the Traditional Plan is the full cost of Single with Medicare coverage, \$376.21, minus the premium sharing amount that the employee pays for the domestic partner coverage, \$94.06 (the difference between the retiree share for Single with Medicare coverage, \$94.05, and for Member & Spouse/Domestic Partner with Medicare coverage, \$188.11). Therefore, the total monthly imputed income attributable to domestic partner coverage for this retiree is \$282.15.

Example 3: An employee of a local employer with Single coverage in the Traditional Plan adds a domestic partner to the coverage. The employer also requires its employees to pay the full cost of dependent coverage. Since the employee, rather than the employer, pays the full cost of the domestic partner's coverage (the \$545.95 monthly dependent cost of Member & Spouse/Domestic Partner coverage), the employee will have no imputed income for this benefit and no additional tax liability.

Certifying a Partner's Dependent Status

If a domestic partner can meet the Internal Revenue Service's definition of a dependent for tax purposes, found in Section 152 of the IRC, the employer does not have to treat the domestic partner coverage as a taxable benefit. The requirements for dependent status are not easily met and are strictly enforced by the IRS. If an employee wants to claim a dependency exemption for a domestic partner, all five of the following dependency tests must be met:

- The member of the household or relationship test,
- The citizen or resident test,
- The joint return test,
- The gross income test, and
- The support test.

See Internal Revenue Service *Tax Topic 354 - Dependents* for additional information on dependent status for federal tax purposes.

The IRS has stated in private letter rulings that an employer can rely on an employee's written certifi-

cation that the dependent meets the IRS tests for dependency. An employee or retiree can provide certification that a domestic partner meets the Internal Revenue Code criteria for a dependent in one of several ways:

- State employees paid through Centralized Payroll can submit the *Employee Tax Certification — Domestic Partner Benefit* form to certify their partner's dependent status.
- Employees of other employers should see their employer's Human Resources Officer or Benefits Administrator to determine how tax dependent certification should be provided.

- Retirees can submit the *Employee Tax Certification — Domestic Partner Benefit* form to certify their partner's dependent status.

Since an individual's situation can change, an employee or retiree who files a certification stating that the domestic partner meets the IRS definition of dependent will be required to file a new certification every calendar year to continue that same tax treatment of the benefit.

Employees or retirees may also wish to consult with a professional tax advisor or contact the Internal Revenue Service directly at 1-800-TAX-1040 or over the Internet at: www.irs.gov.

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